

COMMONWEALTH OF MASSACHUSETTS

ESSEX COUNTY

SUPREME JUDICIAL COURT
NO.

APPEALS COURT
NO. 2016-P-1300

COMMONWEALTH

V.

RICHARD D. JONES

DEFENDANT'S APPLICATION FOR DIRECT APPELLATE REVIEW

Now comes the defendant, Richard D. Jones, pursuant to Mass. R.A.P. 11, and requests that he be granted direct appellate review of the appeal of his convictions on Essex County indictment 2009-406 (counts 001 and 003 through 006).

The trial court's repeated refusals to issue summonses under Mass. R. Crim. P. 17(a)(2) for mental health records of one of the complainants underscores ways in which the interpretation of relevance that must be shown under the Dwyer-Lampron protocol¹ fails to accommodate a defendant's right to exculpatory evidence and to present a defense in extremely serious cases. Here, where the defendant had specific information that warranted issuance of the summonses, the judge's

¹Commonwealth v. Dwyer, 448 Mass. 122 (2006) and Commonwealth v. Lampron, 441 Mass. 265 (2004).

assumption that nothing relevant would be contained in the records because no mandated reports under G.L. c. 119, §§ 51A and 51B were filed by the therapists and because he understood the therapy to predate the allegations being made was an abuse of discretion and error of law.

In most cases, defendants do not have access to such specific information except through random events or its inclusion in reports prepared by state actors at their discretion. The inequity of this situation provides support for a modification of the Dwyer-Lampron protocol allowing a summons to issue for protected viewing by counsel upon a minimal showing of relevance.

Respectfully submitted,

RICHARD D. JONES

By his attorney,

/s/ Nancy Dolberg

Nancy Dolberg

BBO #545666

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Dated: December 22, 2016

COMMONWEALTH OF MASSACHUSETTS

ESSEX COUNTY

SUPREME JUDICIAL COURT
NO.

APPEALS COURT
NO. 2016-P-1300

COMMONWEALTH

V.

RICHARD D. JONES

MEMORANDUM IN SUPPORT OF DEFENDANT'S APPLICATION FOR
DIRECT APPELLATE REVIEW

STATEMENT OF PRIOR PROCEEDINGS

By Essex County indictment 2009-000406 (001-006), the defendant was charged on March 27, 2009 with offenses against his daughters K.J. and S.J. (R. 13-24).¹ The charges as to S.J., alleged to have occurred "on diverse dates from and between" February 26, 2001 and December 31, 2001, were as follows: (001) rape of a child with force (finger in genital opening) (G.L. c.265, §22A), (002) indecent assault and battery on a child under fourteen (hand on child's genital area)

¹The appendix to this application is cited by page as "(A.)," and is reproduced post. The record appendix to the defendant's brief, filed in the Appeals Court, is cited as "(R.)" and is set forth in a separate volume. The trial transcript is cited by volume number and page, as "(Tr. /)" and hearing transcripts are cited by date and page, as "(Tr. month/day/year:p)."

(G.L. c.265, §13B), (003) rape of a child with force (penis in genital opening) (G.L. c. 265, §22A), (004) rape of a child with force (penis in child's mouth) (G.L. c. 265, §22A), and (005) indecent assault and battery on a child under fourteen (child's hand on penis) (G.L. c. 265, §13B) (R. 13-22). As to K.J., the defendant was charged in count 006 with indecent assault and battery on a child under fourteen (hand on child's genital area) "on diverse dates from and between" August 1, 2005 and June 31, 2007 (G.L. c. 265, §13B) (R. 23-24).

The indictment was tried by a Superior Court jury, Judge Timothy Q. Feeley presiding, from April 2 through April 12, 2012 (A. 8-10). A required finding of not guilty on count 002 was ordered by Judge Feeley on April 9, 2012 (Tr. 5/140; A. 10). The defendant was found guilty on the remaining charges (A. 10).

On April 12, 2012 he was sentenced to concurrent terms of ten to twelve years at the Massachusetts Correctional Institution, Cedar Junction, on counts 003 and 004; to a term of two to three years, from and after his sentence on count 003, on count 006; and five years of probation, to be served from and after his sentence on count 003, on counts 001 and 005 (A. 10).

The defendant's notice of appeal was timely filed on April 12, 2012 (A. 11). The case was subsequently entered in the Appeals Court, and the defendant's brief was filed on December 20, 2016.

STATEMENT OF FACTS RELEVANT TO THE APPLICATION FOR
DIRECT APPELLATE REVIEW

In the fall of 2008, the defendant's daughter K.J., then fourteen years old and a freshman in high school, told her new friend that the defendant had "stuck his hands down her pants" two years prior (Tr. 4/61, 124). The friend then told the high school adjustment counselor, Ellen Kline (Tr. 4/125-126). When Ms. Kline asked K.J. about the report, she denied that anything had occurred, stating that she had dreamed it (Tr. 4/62-63). She told her mother, who had also been contacted by Ms. Kline, the same thing (Tr. 4/63).

In early February 2009, K.J. made the allegation to her sister S.J., who is three years older, and who had conflicts with the defendant over her own conduct, including stealing money from relatives and cutting classes (Tr. 3/199-200, 213, 226-227; 4/67-69, 180). S.J. then alleged that she had been sexually abused by the defendant eight years prior, and went to the police

(Tr. 200-201, 227). At that time the Department of Children and Families (DCF) got involved (Tr. 4/195).

Defense counsel argued to the jury that K.J. made a false accusation against the defendant in a misguided attempt to bond with her new friend and with S.J., and that S.J. seized on K.J.'s story and "used it as an excuse to gain freedom and avoid punishment" (Tr. 6/9). Counsel, however, had reminded the judge that the defense was "shut down" by a series of his rulings denying access to K.J.'s mental health records (Tr. 4/210).

Rule 17(a)(2) motions for K.J.'s records

Other than for the records of Ellen Kline and DCF, both of which the Commonwealth agreed should be produced (R. 25, 43, 58), the trial court refused to summons records under Mass. R. Crim. P. 17(a)(2) pursuant to the Dwyer-Lampron protocol², as requested by the defense.

On April 5, 2010 Judge Feeley conducted a hearing on the defendant's motions for the production of records of K.J.'s treatment by Dr. Prince, a psychiatrist at Salem Hospital/North Shore Medical

²Commonwealth v. Dwyer, 448 Mass. 122 (2006) and Commonwealth v. Lampron, 441 Mass. 265 (2004).

Center, and by staff at the Marblehead Counseling Center (Tr. 4/5/2010:4; R. 30-39). The treatment postdated the alleged touching by the defendant and apparently both predated and coincided with the period in which allegations were made to K.J.'s friend and to S.J., the police and DCF (Tr. 4/5/2010:5-7, 17; R. 33, 38).

K.J. had been referred for mental health treatment by her high school in the fall of 2008 (Tr. 4/5/2010:9). DCF records and interviews with witnesses indicated that K.J. had been "cutting" herself and had punched a fellow student on the bus, "hurt[ing] him quite badly." She was, as a result, reportedly seen by a "crisis team" at school, evaluated by Dr. Prince, and "set up with a therapist" (Tr. 4/5/2010:9).

According to the affidavit of counsel, named witnesses indicated that K.J. was receiving treatment at the Marblehead Counseling Center prior to making allegations (R. 38). DCF records indicated that allegations were reported to Ms. Kline, to whom K.J. denied them when asked (R. 33, 38). Counsel explained to the court that the credibility of the complainants was expected to be the "sole issue for the jury," that K.J. was likely to have discussed the alleged abuse

while in counseling; and if not, that lack of complaint to therapists during that time would be potentially exculpatory (Tr. 4/5/2010:5-6; R. 33, 38).

In opposing the defendant's motions, the prosecutor argued that the "standard is very high under Lampron" and that presumptively privileged records have to be shown to prove or disprove a dispositive issue in the case" before being summonsed (Tr. 4/5/2010:11-12). She stated that because therapists are mandated reporters under G.L. c. 119, §§51A and 51B, and there was no report of abuse filed by any therapist, nothing relevant to the alleged touching would be found in the requested records.

Despite the defendant's response that no such assumption could validly be made and that Ms. Kline, who filed no report, disproved this theory, the judge adopted the Commonwealth's reasoning in denying the motions (Tr. 4/5/2010:15; see also Tr. 11/15/2010:11). He wrote, "[a]s the alleged abuse was undisclosed at the time, the court concludes that the requested records do not contain ... statements of abuse, as the mental health providers would have been legally required to file reports of the disclosure of any such abuse (and they did not do so)" (A. 14). He also

rejected the relevance of the absence of any disclosure to the therapists (A. 14-15).

The defendant renewed his prior motions in light of counsel's review of DCF records that had then been provided (Tr. 11/15/2010:4; R. 52). According to counsel's supplemental affidavit, a DCF document stated that K.J. reported "that at the beginning of this school year she had a memory of [the defendant] putting his hand down her pants when she was in the 7th grade." It also stated that K.J. had a "flashback" of this event that was triggered by a classmate grabbing her leg (R. 52). The defendant argued that these statements suggested that K.J.'s allegations may stem from a repressed memory, making her discussions with therapists relevant and material (R. 53).

The judge denied the defendant's motions by a second order dated November 16, 2010, stating that the documents requested "pre-date the victim's first disclosure of the alleged abuse," and her "failure to disclose" at an earlier date did not make records of her communications "evidentiary and relevant" (A. 19). He denied the defendant's subsequently renewed motions by a third order dated September 11, 2011, assuming that K.J. made no "disclosures" based on prior

reasoning (A. 21). The judge also denied the defendant's motion in limine requesting the records in light of the Commonwealth's plan to call an expert witness on the behavior and symptoms of children who are sexually abused (Tr. 3/138, R. 66). He renewed his objection to the court's refusal to summons K.J.'s mental health records when she testified at trial and as it affected his ability to cross-examine the Commonwealth's expert (Tr. 4/105, 5/14).

The allegations made by both sisters presented a common pattern. K.J. testified that in 2006, she was watching television with the defendant on a day that she stayed home from school (Tr. 4/56, 59). While she was sitting on his lap, he slid his hand under her pants and underwear, to her pubic area (Tr. 4/54, 57). S.J. testified that in 2001, she was watching television with the defendant on a day she stayed home from school (Tr. 3/183-184, 186). She said that the defendant told her to take off her clothes and put his fingers in her vagina (Tr. 3/187-188). Three or four months later, she again stayed home from school and was watching television with the defendant. On that occasion, she testified, he had her take off her clothes, put his fingers in her vagina, tried

repeatedly to put his penis in her vagina, which it did "a little bit," put her hand on his penis and his penis in her mouth (Tr. 3/192, 194-195).

There was no physical evidence and no eyewitness testimony presented at trial.

ISSUE PRESENTED AND STATEMENT OF PRESERVATION

This case illustrates the deprivation of a defendant's constitutional rights where an excessively demanding standard for proving relevance is imposed before a rule 17(a)(2) summons for a complainant's records will be issued. While the Dwyer-Lampron protocol was designed to address the stringency of the prior protocol, post-Dwyer cases have suggested that defendants must possess a level of specificity regarding a complainant's counseling experience that is unattainable, barring random fortuitous events or the inclusion of such information in the reports of state actors.

Here, the judge's interpretation of relevance constituted an abuse of discretion and error of law, as the defendant had specific information that warranted the issuance of the summonses. However, the general lack of access to such evidence provides support for the modification of the protocol to require a minimal

showing of relevance for issuance of the summons and protected review for the records by counsel, who would then be required to make a higher showing of relevance to use the material at trial.

The defendant moved repeatedly for the production of K.J.'s records, as outlined supra. The issue is therefore preserved for review.

ARGUMENT

DIRECT APPELLATE REVIEW SHOULD BE GRANTED TO ESTABLISH THAT ASSUMPTIONS THAT RECORDS ARE NOT RELEVANT BECAUSE NO MANDATED REPORTS WERE FILED AND BECAUSE THE JUDGE BELIEVED THAT THERAPY PRECEDED ALLEGATIONS BEING MADE TO THE POLICE ARE NOT VALID REASONS FOR DENYING ISSUANCE OF 17(a)(2) SUMMONSES; AND THAT A MINIMAL SHOWING OF RELEVANCE SHOULD BE REQUIRED FOR A PROTECTED REVIEW OF SUCH RECORDS BY COUNSEL.

The trial court's repeated refusal to issue summonses under Mass. R. Crim. P. 17(a)(2) for K.J.'s records of counseling with Dr. Prince at Salem Hospital/North Shore Medical Center, the Marblehead Counseling Center and the Marblehead Veterans Middle School constituted an abuse of discretion and error of law. The defendant met the threshold under the Dwyer-Lampron protocol for the records to be summonsed into court and reviewed by defense counsel subject to protective order. See Commonwealth v. Labroad, 466 Mass. 1037 (2014). Denial of the defendant's access to

the records was a violation of his right to due process, confrontation and compulsory process under art. 12 of the Massachusetts Declaration of Rights, and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

The records, which postdated the alleged touching but predated and apparently coincided with K.J. making allegations, were relevant as to any statements K.J. or the therapists made, or that K.J. failed to make, regarding herself, the defendant and her family circumstances that may have affected her claims. The records were also relevant as to any information she shared, or conclusions that the therapists may have drawn, about her statements that she dreamed the touching, and that she had a "flashback" at the beginning of the current school year "of [the defendant] putting his hand down her pants when she was in the 7th grade" when a classmate put his hand on her leg (Tr. 4/62-63; R. 52). Finally, the defendant established that the records of Marblehead Middle School were likely to contain statements about K.J.'s positive relationship with the defendant.

- A. The judge's refusal to issue the rule 17(a)(2) summonses, based on his assumption that K.J. made no relevant

statements to therapists because no chapter 119, §§51A or 51B reports were filed, and that the records predated disclosure and were not therefore evidentiary, was an abuse of discretion and error of law.

The judge's denials of the defendant's repeated motions for K.J.'s mental health records were based on the faulty assumption that they would contain no relevant information because no mandated reporters filed reports under §§51A and 51B (A. 14). As the defendant pointed out on more than one occasion, such an assumption cannot validly be made, and in fact was disproven by the relevant statements made by K.J. to Ellen Kline, who made no such report (Tr. 4/5/2010:15, 11/15/2010:11). This articulated premise of the judge's denials of the defendant's requests for rule 17(a)(2) summonses was therefore an abuse of discretion and error of law.

The judge's second basis for denying the defendant's motions -- that "[a]t the time of the referral to the psychiatrist and counseling center, {K.J.} had confided to no one about the alleged abuse" (A. 14-15) -- constitutes both factual and legal error. While the parties agreed that K.J. was seen by Dr. Prince and at the Marblehead Counseling Center prior to

allegations being made to the *police* in February 2009 (Tr. 4/5/2010:16), as the judge recognized, she made allegations to her friend, and a subsequent denial to Ms. Kline and to her mother, in the same time period when she was receiving therapy (A. 13).

The precise timing and number of mental health providers who saw K.J. is somewhat ambiguous, since the information provided to the court by the Commonwealth was inconsistent (Tr. 4/5/2010:9, 16; 11/15/2010:20, 4/95) and the records were never summonsed. What is clear is that the defendant made a demonstrable showing that K.J. was seeing psychiatrists and counselors, and being at least evaluated for medication, during a period of time when she began to "remember" that she had been indecently touched by the defendant years prior. As counsel argued, in addition to the other questions raised by the timing of her referral for therapy due to her problematic behavior at school, there was the possibility that the providers she saw "implanted" the idea or otherwise effected K.J.'s belief about what occurred (Tr. 11/15/2010:19).

The judge's assertion that K.J.'s therapy records would not be relevant if, as he mistakenly found, they simply predated her allegation, is also an error of

law. See Commonwealth v. Sheehan, 435 Mass. 183, 188-190 (2001) (records predating alleged abuse relevant); Commonwealth v. Pratt, 42 Mass. App. Ct. 695, 701 (1997) (relevant that complainant failed to make disclosure to social worker in months following alleged incident).

Appellate cases have found that similar showings warranted the production of privileged records. Although by necessity these decisions invoke protocols that have changed and evolved, they present factual patterns into which the instant case fits. See Commonwealth v. Pare, 43 Mass. App. Ct. 566 (1997), S.C., 427 Mass. 427, 431 (1998); Commonwealth v. Caceres, 63 Mass. App. Ct. 747, 751 (2005); Commonwealth v. Oliveira, 431 Mass. 609 (2000), S.C., 438 Mass. 325 (2002); Sheehan, 435 Mass. at 814.

- B. The test for relevance to summons records under the Dwyer-Lampron protocol must not be interpreted to block access to exculpatory evidence.

The Dwyer-Lampron protocol requires a defendant seeking a summons under rule 17(a)(2) to show that the requested documents are "relevant and have evidentiary value." Dwyer, 448 Mass. at 142. Interpreting that test the way the Commonwealth characterized it, as

"very high" (Tr. 4/5/2010), unfairly blocks a defendant's access to exculpatory evidence. Dwyer-Lampron was developed to address the unduly restrictive effects of the Bishop-Fuller³ protocol governing pretrial access by criminal defendants to the contents of statutorily privileged witness records. Id. at 144.

The threshold showing of relevance required to summons presumptively privileged records should be minimal. A defendant's ability to obtain "relevant" information to satisfy a trial court to issue a rule 17(a)(2) summons can depend solely upon fortuitous events or the decision of state actors to include such information in their reports. The inequity of this situation should dictate an attainable and consistent standard requiring a minimal showing of relevance for summoning records for protected review by counsel. It should then be up to defense counsel to demonstrate a higher level of relevance and materiality of evidence contained in the records before it is used at trial.

Commonwealth v. Labroad, 466 Mass. at 1039 presents this kind of fortuity. There the Court ruled that it was error for the trial court to deny the

³Commonwealth v. Bishop, 416 Mass. 169 (1993) and Commonwealth v. Fuller, 423 Mass. 216 (1996).

defendant's pretrial motion for the production of the complainant's records of her session with a psychologist that followed the alleged rape but preceded her disclosure to the authorities. , Id. at 1039. However, the defendant would not have had access to the necessary specificity if the police had not chosen both to interview the psychologist and to include the information in their report. Id. at 1038.

A standard for relevance based on Labroad's level of detail as to a complainant's meetings with counselors is generally unattainable and subject to the whims mentioned above. Yet post-Dwyer cases have turned on the specificity of information about a complainant's counseling experience available to a defendant in determining whether records should be summonsed. See Commonwealth v. Olivier, 89 Mass. App. Ct. 836, 846 (2016); Commonwealth v. Bourgeois, 68 Mass. App. Ct. 433, 434 (2007). See also Commonwealth v. Sealy, 467 Mass. 617, 628 (2014) (comparing the particularity present in Labroad with that deemed lacking in Bourgeois).

STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is appropriate because it

is only within the purview of this Court to address the excessively rigorous standard for relevance required by trial courts of defendants seeking rule 17(a)(2) summonses for presumptively privileged records of complainants. The Dwyer-Lampron protocol has not met the goal of addressing the inability of defendants to meet the stringent Bishop-Fuller standard for gaining access to exculpatory evidence necessary to their defense.

In this case, the defendant had information that warranted issuance of the summonses, but the judge deemed the records not relevant because he assumed K.J. made no reports to therapists who were mandated reporters and because he believed the therapy to predate her allegations and therefore to be irrelevant. A relevance standard that requires proof of a particular conversation between a complainant and a counselor is unattainable and will be met only through fortuitous events or the decision of state actors to include such information in their reports. The Dwyer-Lampron protocol should be modified to require a minimal showing of relevance for the issuance of rule 17(a)(2) summonses and protected review by counsel, and a higher standard for use of the evidence at trial.

CONCLUSION

For the reasons stated above, the defendant asks
that this Court grant direct appellate review.

Respectfully submitted,

RICHARD D. JONES

By his attorney,

/s/ Nancy Dolberg

Nancy Dolberg

BBO #545666

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CERTIFICATE OF SERVICE

I, Nancy Dolberg, hereby certify that I served one copy of the foregoing Application for Direct Appellate Review and Memorandum in Support by first-class prepaid mail, on December 22, 2016, to Assistant District Attorney Elin Graydon, 10 Federal Street, Salem, MA 01970.

/s/ Nancy Dolberg

Nancy Dolberg

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0977CR00406 Commonwealth v Jones, Richard

Case Type	Indictment	Initiating Action:	RAPE OF CHILD WITH FORCE c265 §22A
Case Status	Open	Status Date:	07/29/2013
File Date	03/27/2009	Case Judge:	
DCM Track:	C - Most Complex	Next Event:	

All Information	Party	Charge	Event	Tickler	Docket	Disposition
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Party Information

Commonwealth - Prosecutor

Alias

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[More Party Information](#)

Party Charge Information

Jones, Richard D - Defendant

265/22A/A-0 - Felony RAPE OF CHILD WITH FORCE c265 §22A

Original Charge 265/22A/A-0 RAPE OF CHILD WITH FORCE c265 §22A (Felony)

Indicted Charge
Amended Charge

Charge Disposition	
Disposition Date	04/12/2012
Disposition	Guilty

Jones, Richard D - Defendant

265/13B/A-3 - Felony INDECENT A&B ON CHILD UNDER 14 c265 §13B

Original Charge 265/13B/A-3 INDECENT A&B ON CHILD UNDER 14 c265 §13B (Felony)

Indicted Charge
Amended Charge

Charge Disposition	
Disposition Date	04/09/2012
Disposition	Dismissed

Jones, Richard D - Defendant

 265/22A/A-0 - Felony RAPE OF CHILD WITH FORCE c265 §22A

Original Charge 265/22A/A-0 RAPE OF CHILD WITH FORCE c265
§22A (Felony)

Indicted Charge
Amended Charge

Charge Disposition
Disposition Date 04/12/2012
Disposition Guilty

Jones, Richard D - Defendant

 265/22A/A-0 - Felony RAPE OF CHILD WITH FORCE c265 §22A

Original Charge 265/22A/A-0 RAPE OF CHILD WITH FORCE c265
§22A (Felony)

Indicted Charge
Amended Charge

Charge Disposition
Disposition Date 04/12/2012
Disposition Guilty

Jones, Richard D - Defendant

 265/13B/A-3 - Felony INDECENT A&B ON CHILD UNDER 14 c265 §13B

Original Charge 265/13B/A-3 INDECENT A&B ON CHILD UNDER 14
c265 §13B (Felony)

Indicted Charge
Amended Charge

Charge Disposition
Disposition Date 04/12/2012
Disposition Guilty

Load Party Charges 6 through 8 Load All 8 Party Charges

Events

Date	Session	Location	Type	Event Judge	Result
04/22/2009 09:00 AM	Criminal 1 - K		Arraignment		Held as Scheduled
05/22/2009 09:00 AM	Criminal 1 - K		Pre-Trial Conference		Held as Scheduled
06/17/2009 09:00 AM	Criminal 1 - K		Hearing RE: Discovery Motion(s)		Held as Scheduled
07/13/2009 09:00 AM	Criminal 1 - K		Hearing on Compliance		Held as Scheduled
08/28/2009 09:00 AM	Criminal 1 - K		Non-Evidentiary Hearing on Suppression		Held as Scheduled
10/07/2009 09:00 AM	Criminal 1 - K		Status Review		Held as Scheduled
11/24/2009 09:00 AM	Criminal 1 - K		Status Review		Held as Scheduled
01/19/2010 08:00 AM	Criminal 1 - K		Evidentiary Hearing on Suppression		Held as Scheduled
02/16/2010 08:00 AM	Criminal 1 - K		Evidentiary Hearing to Dismiss		Held as Scheduled
02/24/2010 08:00 AM	Criminal 1 - K		Motion Hearing		Rescheduled

Date	Session	Location	Type	Event Judge	Result
04/05/2010 08:00 AM	Criminal 1 - K		Hearing on Dwyer Motion		Held as Scheduled
05/17/2010 08:00 AM	Criminal 1 - K		Hearing on Dwyer Motion		Held as Scheduled
06/28/2010 08:00 AM	Criminal 1 - K		Hearing on Dwyer Motion		Held as Scheduled
08/02/2010 08:00 AM	Criminal 1 - K		Hearing on Dwyer Motion		Held as Scheduled
08/31/2010 08:00 AM	Criminal 1 - K		Hearing on Dwyer Motion		Held as Scheduled
10/01/2010 08:00 AM	Criminal 1 - K		Hearing on Motion to Continue		Held as Scheduled
10/04/2010 08:00 AM	Criminal 1 - K		Hearing on Dwyer Motion		Rescheduled
11/15/2010 08:00 AM	Criminal 1 - K		Hearing on Dwyer Motion		Held as Scheduled
01/03/2011 08:00 AM	Criminal 1 - K		Hearing on Dwyer Motion		Rescheduled
01/20/2011 08:00 AM	Criminal 1 - K		Hearing on Motion to Continue		Held as Scheduled
02/15/2011 08:00 AM	Criminal 1 - K		Trial Assignment Conference		Rescheduled
02/22/2011 08:00 AM	Criminal 1 - K		Trial Assignment Conference		Rescheduled
03/28/2011 08:00 AM	Criminal 1 - K		Trial Assignment Conference		Held as Scheduled
05/02/2011 08:00 AM	Criminal 1 - K		Hearing on Compliance		Held as Scheduled
06/09/2011 08:00 AM	Criminal 1 - K		Final Pre-Trial Conference		Held as Scheduled
07/18/2011 08:00 AM	Criminal 2 - J		Jury Trial		Held as Scheduled
07/18/2011 08:00 AM	Criminal 1 - K		Jury Trial		Not Held
07/19/2011 08:00 AM	Criminal 2 - J		Jury Trial		Held as Scheduled
07/20/2011 08:00 AM	Criminal 2 - J		Jury Trial		Held as Scheduled
07/21/2011 08:00 AM	Criminal 2 - J		Jury Trial		Held as Scheduled
09/15/2011 08:00 AM	Criminal 1 - K		Status Review		Held as Scheduled
09/21/2011 08:00 AM	Criminal 1 - K		Pre-Trial Conference		Held as Scheduled
09/29/2011 08:00 AM	Criminal 1 - K		Status Review		Held as Scheduled
10/04/2011 08:00 AM	Criminal 2 - J		Jury Trial		Rescheduled
12/15/2011 08:00 AM	Criminal 1 - K		Hearing on Motion to Continue		Held as Scheduled
			Jury Trial		Rescheduled

Date	Session	Location	Type	Event Judge	Result
03/05/2012 09 30 AM	Criminal 1 - K				
04/02/2012 09 30 AM	Criminal 2 - J		Jury Trial		Rescheduled
04/02/2012 09 30 AM	Criminal 1 - K		Jury Trial		Not Held
04/03/2012 09 30 AM	Criminal 2 - J		Jury Trial		Rescheduled
04/04/2012 09 30 AM	Criminal 2 - J		Jury Trial		Rescheduled
04/05/2012 09 30 AM	Criminal 2 - J		Jury Trial		Rescheduled
04/06/2012 09 30 AM	Criminal 2 - J		Jury Trial		Rescheduled
04/09/2012 09 30 AM	Criminal 2 - J		Jury Trial		Rescheduled
04/10/2012 09 30 AM	Criminal 2 - J		Jury Trial		Rescheduled
04/11/2012 09 30 AM	Criminal 2 - J		Jury Trial		Rescheduled
04/12/2012 09:30 AM	Criminal 2 - J		Hearing for Sentence Imposition		Held as Scheduled

Ticklers

Tickler	Start Date	Days Due	Due Date	Completed Date
Pre-Trial Hearing	04/22/2009	0	04/22/2009	07/29/2013
Final Pre-Trial Conference	04/22/2009	346	04/03/2010	07/29/2013
Case Disposition	04/22/2009	360	04/17/2010	07/29/2013
Review Appeals Filed	03/30/2016	30	04/29/2016	

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/27/2009	Indictment returned	1	
04/22/2009	Deft arraigned before Court		
04/22/2009	Appearance of Commonwealth's Atty Kim M Faitella	2	
04/22/2009	Committee for Public Counsel Services appointed, pursuant to Rule 53	3	
04/22/2009	Deft waives reading of indictment		
04/22/2009	RE Offense 1:Plea of not guilty		
04/22/2009	RE Offense 2:Plea of not guilty		
04/22/2009	RE Offense 3:Plea of not guilty		
04/22/2009	RE Offense 4:Plea of not guilty		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/22/2009	RE Offense 5.Plea of not guilty		
04/22/2009	RE Offense 6 Plea of not guilty		
04/22/2009	RE Offense 7:Plea of not guilty		
04/22/2009	RE Offense 8.Plea of not guilty		
04/22/2009	Bail set \$5000 00 Cash (Feeley, J)	4	
04/22/2009	Bail warning read		
04/22/2009	Assigned to track "C" see scheduling order		
04/22/2009	Tracking deadlines Active since return date		
04/22/2009	Case Tracking scheduling order (Timothy Feeley, Justice) mailed 4/22/2009	5	
05/22/2009	Commonwealths notice of discovery filed in court	6	
06/10/2009	Cash Bail Received in the amount of \$5,000.00.	7	
06/17/2009	Motion for Discovery Agreed as Amended	8	
06/17/2009	Motion for Notice of "First Complaint" Witnesses and Information Agreed	9	
06/17/2009	MOTION by Deft for Disclosure of Prior and Subsequent Bad Acts filed	7 1	
08/28/2009	Motion to suppress statements filed in court	10	
10/07/2009	Appearance of Deft's Atty Jessica Thrall	11	
01/19/2010	Affidavit in support of motion to suppress filed in court	12	
01/19/2010	Hearing on motion to suppress held, matter taken under advisement (Lu, J)		
01/19/2010	Motion for free transcription allowed not to exceed \$500 00 (Lu, J) copy given in hand to Atty Thrall	13	
01/19/2010	Motion To Dismiss and Affidavit In Support Of - filed	14	
02/16/2010	Motion #14 allowed as agreed		
02/16/2010	RE Offense 6 Dismissed		
02/16/2010	The defendant Richard Jones motion to suppress statements is DENIED (Lu, J) copy given in hand to both attys	15	
02/16/2010	Motion for discovery of details of first complaint evidence filed	16	
02/16/2010	Motion for discovery filed	17	
02/16/2010	Motion for rule 17 Lampron/Dwyer summons for records of Victim filed	18	
02/16/2010	Motion for rule 17 Lampron/Dwyer summons for records of Victim Filed	19	
02/16/2010	Motion for rule 17 Lampron/Dwyer summons for records of Victim Filed	20	
04/05/2010	After hearing motions #19 & 20 taken under advisement (Feeley, J)		
04/05/2010	MOTION (P#18) allowed (Motion to Order Records) (John Lu, Justice) Copies mailed 4/6/2010		
04/07/2010	Defendant motions for Rule 17 subpoenas (Motions #19 & 20) are DENIED (Feeley, J) copies sent to both attys and notified by phone	21	
04/12/2010	Order for Production of Records Issued to North Shore Tec High School Sent on 4/12/10 with a return date of 5/1/10	22	
04/30/2010	Two Sets of Records from North Shore Technical High School Received	23	
08/31/2010	MOTION by Deft For Rule 17 Lampron/Dwyer Summons For Records Of K.J. and Affidavit in Support Of - Filed	24	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/31/2010	MOTION by Def. For Rule 17 Lampron/Dwyer Summons For Records Of K J and Affidavit in Support Of - Allowed. (John T. Lu Justice) copies to Def. Att. J.T., CPCS & K.F. ADA	25	
08/31/2010	Protective Order For the Commonwealth (John T. Lu, Justice)	26	
08/31/2010	Commonwealth's Motion To Review Privileged Records - without objection, Allowed. (John T. Lu, Justice) copies to ADA K F. & Def. Att. J. T. CPCS	28	
08/31/2010	Protective Order issued for defense counsel access to presumptively privileged records (John T. Lu, Justice)	27	
08/31/2010	Ex-Parte Motion and Affidavit filed by defendant - Allowed (John T. Lu, Justice) Copt to def. att. J.T. CPCS	29	
09/01/2010	Order for Production of Records issued to Keeper of Records Marblehead Veterans Middle School re Production of records returnable 9/27/2010.	30	
09/23/2010	Records from the Marblehead Veterans Middle School received.	31	
11/15/2010	Hearing held on Dwyer held and taken under advisement (Feeley, J)		
11/16/2010	MEMORANDUM & SECOND ORDER: " ORDER" Defendant's motion for a Rule 17 Subpoena (D.25) is DENIED. Upon reconsideration, defendant's motions for Rule 17 subpoenas (D. 19,20) are DENIED 11/16/2010, (Timothy Feeley, Justice) copy to attys.	32	
03/22/2011	Court Reporter O'Neill, Christina is hereby notified to prepare one copy of the transcript of the evidence of 01/19/2010	33	
03/28/2011	Commonwealth's motion for reciprocal discovery filed in court	34	
03/28/2011	Motion for Discovery allowed by agreement	35	
04/19/2011	MOTION by Def: for Hearing in Advance of Trial on Defendant's Request for Relief from Prejudicial Joinder filed	36	
04/19/2011	MOTION by Def: for Relief from Prejudicial Joinder filed (in Not Public Envelope)	37	
04/19/2011	MOTION by Def: to Dismiss Affidavit and Memorandum filed (in Not Public Folder)	38	
05/02/2011	Motion to dismiss withdrawn in open court after colloquy with defendant (Feeley, J)		
05/02/2011	Motion #36 (MOTION by Def: for Hearing in Advance of Trial on Defendant's Request for Relief from Prejudicial Joinder) - Allowed hearing held (Timothy Feeley Justice) copies to Def Att J.T. & ADA K F.		
05/02/2011	Motion #37 (MOTION by Def: for Relief from Prejudicial Joinder) - Allowed with Commonwealth's agreement - Commonwealth elects to try Count 7 first - Counts 12 -- 6 to follow, or if not possible Counts 1 -- 6 scheduled for October 4th (Timothy Feeley, Justice) copies to Def. Att. J.T. & ADA K F.		
05/02/2011	Motion #38 (MOTION by Def: to Dismiss Affidavit and Memorandum) - Withdrawn in open court 5/2/11 after colloquy with defendant (Timothy Feeley, Justice) copies to Def Att J.T. & ADA K F.		
05/05/2011	ORDER ON COMMONWEALTH'S MOTION FOR RECIPROCAL DISCOVERY - Before the court is the Commonwealth's motion for reciprocal discovery. (D. 34) The only issue of continuing dispute is the Commonwealth's request to be provided with all statements that the defendant intends to use to impeach a witness that the Commonwealth expects to call in its case-in -chief, including statements made by expected witnesses to third-parties unconnected to the defendant's case. The court orders production of the requested statements to the same degree permitted by the Supreme Judicial Court in Commonwealth v. Durham, 446 Mass 212 (2006) (Timothy Feeley, Justice)	39	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/11/2011	Transcript of testimony received 1 volume on cd dated 1/19/10 from Transcript of proceedings from Court Reporter O'Neill, Christina	39 1	
05/26/2011	Ex-Parte motion filed by defendant - Allowed Impounded (Howard Whitehead, Justice) copy to def, att J T , CPCS	40	
06/09/2011	Filed: Final Pre-Trial Conference Memorandum	41	
06/09/2011	Defendants motion Re Court order to preclude the Commonwealth from sharing or discussing the contents of impeachment materials with its witnesses--after hearing DENIED (Whitehead, J)	42	
06/09/2011	Motion to continue allowed (Whitehead, J)	43	
06/09/2011	Commonwealths response to defendants request for written discovery filed in court	44	
06/09/2011	Defendants second response to the Commonwealths motion for reciprocal discovery filed in court	45	
06/09/2011	Protective order for Commonwealth filed in court	46	
06/09/2011	Commonwealths motion to review privileged records allowed (Whitehead, J)	47	
06/09/2011	NEW ORDER for Production of Records issued to Keeper of Records, North Shore Technical High School per Judge Whitehead for UNREDACTED copies of records returnable on or before 6/15/2011. copy faxed and mailed	49	
06/09/2011	Motion for Rule 17 Lampron/Dwyer summons For Records Of K J and Affidavit in Support Of - Allowed Return date 6/24/2011. Keep the records together with the redacted version, they are subject to the same restrictions (Howard Whitehead, Justice) copy to attys	48	
06/10/2011	Motion in limine to introduce presumptively privileged records at trial filed in court	50	
07/07/2011	Defendant's Protective Order - (Howard Whitehead, Justice)	51	
07/18/2011	MOTION by Deft In Limine To Exclude Testimony Of joanne Kimball - No Action needed.	52	
07/18/2011	Commonwealth's Motion To Amend Indictments - After hearing "Allowed". (Howard Whitehead, Justice)	53	
07/18/2011	Commonwealth's Request For Individual Juror Voir Dire Questions - See Transcript for rulings and discussion (Howard Whitehead, Justice)	54	
07/18/2011	Deft files Opposition To The Commonwealth's Motion To Amend The Indictment - filed in court.	55	
07/18/2011	Commonwealth files Prior, Contemporaneous And Subsequent Bad Acts Instruction - filed in court (Whitehead, J)	56	
07/18/2011	Deft files Notice of Witnesses - filed in court (Whitehead, J)	57	
07/18/2011	MOTION by Deft: For Examination of Jurors - filed in court. (Whitehead, J.)	58	
07/18/2011	Case called to trial on Indictment #007 ONLY. Jury impanelment begins, Jury impaneled but not sworn.		
07/18/2011	Memo of Trial filed, trial begins	59	
07/19/2011	Jury sworn and evidence begins		
07/19/2011	Commonwealth's Motion In Limine To Introduce Evidence Of Defendant's Other Prior , Contemporaneous And Subsequent Bad Acts - "ALLOWED" See transcript for discussion. (Whitehead, J.)	60	
07/19/2011	Commonwealth's Motion In Limine To Prohibit The Introduction Of Any Evidence Regarding Psychiatric Counseling Prior To A Court Ruling On Its Admissability - Allowed (Whitehead, J.)	61	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/19/2011	Motion To Exclude Evidence Of Uncharged Sexual Misconduct RE [REDACTED] - "DENIED". see transcript for discussion (Whitehead, J)	62	
07/19/2011	Def't files Request For Instruction - filed in court	63	
07/19/2011	Commonwealth's Motion In Limine To Admit Testimony Of Sherry Moore As First Complaint - "ALLOWED" see transcript for discussion (Whitehead, J)	64	
07/19/2011	Motion To conduct A Voir Dire Of The Complaining Witness and All "first Complaint" Witnesses - "ALLOWED" See Transcript for Discussion (Whitehead, J)	65	
07/20/2011	Motion For Required Finding Of Not Guilty At Close Of Commonwealth's Case - After a hearing, DENIED See transcript for discussion(M McDonald Court Reporter (Whitehead, J)	66	
07/20/2011	Motion For Required Finding Of Not Guilty At Close Of All The Evidence - Filed and Denied (Howard Whitehead, Justice)	67	
07/21/2011	MOTION by Commonwealth: In Limine To Exclude Documents Offered By The Defendant Absent A Determination Of Relevancy By the Court - No Action Moot. (Whitehead, J.)	68	
07/21/2011	MOTION by Def't: To Exclude Prior Bad Act RE: Defendant Trouble As A Juvenile - No Action Moot (Whitehead, J)	69	
07/21/2011	MOTION by Def't: In Limine Prosecutor's Closing - See transcript for Discussion. (Howard Whitehead, Justice)	70	
07/21/2011	Jury trial ends and deliberations begin.		
07/21/2011	RE Offense 7:Not guilty verdict filed in court and recorded at 3:25 PM (defendant discharged in open court on Offense 007 ONLY. Continued to 10/4/11 for trial on remaining indictments	71	
09/21/2011	Motion for Renewal of Previously Denied Rule 17 Motion for Records Filed and Copy sent to Judge Feeley	72	
09/21/2011	Final Pre-Trial Conference Memorandum Filed in Court (Lu, J)	73	
09/21/2011	Supplemental Discovery Response - the defendant objects to this disclosure (Lu, J.)	74	
09/22/2011	MEMORANDUM & THIRD ORDER Jones' renewed motion for Rule 17 subpoena is DENIED. 9/22/2011, (Timothy Q. Feeley, Justice)	75	
12/15/2011	Motion To continue Trial - Allowed, continued to 04/02/2012 copy to Def Att J T., CPCS & ADA K F.	76	
04/02/2012	MOTION by Commonwealth motion in limine and memorandum in support thereof to admit expert testimony regarding behavioral signs and symptoms of sexually abused children	77	
04/02/2012	Memo of Trial filed Trial Begins	78	
04/02/2012	MOTION by Def't: In Limine To Introduce Presumptively Privileged Records At Trial - filed.	79	
04/02/2012	MOTION by Def't. For Sequestration Of Witnesses - filed	80	
04/02/2012	MOTION by Def't In Limine To Produce Psychiatric Records Of K J And S.J. - filed	81	
04/02/2012	MOTION by Def't. In Limine To Exclude Use Of Term Victim - filed	82	
04/02/2012	MOTION by Def't. In Limine To Exclude Statements Of Richard Jones - filed	83	
04/02/2012	MOTION by Def't. To Exclude Evidence Of Uncharged sexual Misconduct RE Sherry Moore - filed	84	
04/02/2012	Commonwealth files Proposed Witness List	85	
04/02/2012	Def't files Notice Of Witnesses.	86	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/02/2012	Deft files Statement Of the Case	87	
04/02/2012	MOTION by Deft For Examination Of Jurors - filed	88	
04/02/2012	Commonwealth's Request For Individual Juror Voir Dire Questions - filed	89	
04/02/2012	MOTION by Deft In Limine to Exclude Commonwealth Expert Testimony And A Request For A Voir Dire Hearing and Memorandum In Support Of - filed	90	
04/02/2012	MOTION by Deft In Limine Exclusion Of Testimony Regarding Any Claim Of Sexual Assault Not Charged By The Indictments - filed	91	
04/02/2012	MOTION by Deft In Limine To Limit Proposed "First Complaint" Testimony - filed	92	
04/02/2012	MOTION by Commonwealth: In limine To Admit Testimony Of Cheyene Taylor As K J First Complaint - filed.	93	
04/02/2012	MOTION by Commonwealth In Limine To Admit Testimony Of As S J First Complaint K.J.	94	
04/02/2012	Transcript - filed.	95	
04/02/2012	Start of Impanelment .		
04/02/2012	MOTION by Commonwealth. In Limine To Preclude Reference To Any Bad Acts Of The Alleged Victim Including But Not Limited To Any Prior Or Present Drug Use - filed	95.1	
04/02/2012	Deft files Second Response To The Commonwealth's Motion For Reciprocal Discovery - filed.	95.2	
04/02/2012	Deft files Response To the Commonwealth's Motion For Reciprocal Discovery	95.3	
04/04/2012	MOTION #79 (MOTION by Deft In Limine To Introduce Presumptively Privileged Records At Trial) - no Action taken at this time (Feeley J)		
04/04/2012	MOTION #80 (MOTION by Deft For Sequestration Of Witnesses) - Allowed by Agreement (Feeley, J)		
04/04/2012	MOTION #81 (MOTION by Deft In Limine To Produce Psychiatric Records Of K J And S J) - Denied. (Feeley, J.)		
04/04/2012	MOTION #83 (MOTION by Deft. In Limine To Exclude Use Of Term Victim - Denied (Feeley, J)		
04/04/2012	MOTION #83 (MOTION by Deft In Limine To Exclude Statements Of Richard Jones) - Denied, except for doctrine of completeness (Feeley, J)		
04/04/2012	MOTION #84 (MOTION by Deft To Exclude Evidence Of Uncharged sexual Misconduct RE: Sherry Moore) - Allowed. (Feeley, J)		
04/04/2012	MOTION #90 (MOTION by Deft In Limine to Exclude Commonwealth Expert Testimony And A Request For A Voir Dire Hearing and Memorandum In Support Of) - Denied, reserve on voir dire. (Feeley, J.)		
04/04/2012	MOTION #91 (MOTION by Deft: In Limine: Exclusion Of Testimony Regarding Any Claim Of Sexual Assault Not Charged By The Indictments) - Denied without prejudice. (Feeley, J.)		
04/04/2012	Motion In Limine To Exclude Mention Of Prior Trial - Allowed (Feeley J.)	96	
04/04/2012	Motion In Limine Exclusion Of Restraining Order - Allowed by Agreement. (Feeley, J.)	97	
04/04/2012	Commonwealth's Motion In Limine To Preclude Defendant From Eliciting Statements Of The Defendant - Allowed, see endorsement (Feeley, J)	98	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/04/2012	Commonwealth's Motion In Limine To Admit Defendant's Prior Bad Act To Show Intent And Common Scheme And Absence Of Mistake - Denied after hearing from counsel. (Feeley, J.)	99	
04/04/2012	Jury Impaneled and sworn		
04/05/2012	Evidence Continues		
04/06/2012	Deft files Request For Jury Instructions	99.1	
04/09/2012	Hearing held on on Defendant's motion for "Required finding of not guilty at close of Commonwealth's case"Denied"; Re-Newed "Motion" at close of all evidence "Denied".		
04/09/2012	RE Offense 2:Dismissed -- (Directed verdict ALLOWED on Offense 002)		
04/09/2012	Motion For Required Finding Of Not Guilty At Close Of Commonwealth's Case and Affidavit in Support Of - Denied. (Feeley, J)	100	
04/09/2012	Motion For Required Finding Of Not Guilty At Close Of All The Evidence - Denied. (Feeley, J)	101	
04/09/2012	Commonwealth files Request For Jury Instructions	99 2	
04/10/2012	Closings, Jury Charge.		
04/11/2012	ORDERED remanded to the custody of the Essex Correctional Facility (Middleton) To return 4/12/12 at 9 00 AM in Salem Superior Court Bail Revoked.	101 1	
04/12/2012	RE Offense 1:Guilty verdict filed and recorded at 3 15 PM	102	
04/12/2012	RE Offense 3:Guilty verdict filed and recorded at 3.15 PM	103	
04/12/2012	RE Offense 4:Guilty verdict filed and recorded at 3:15 PM	104	
04/12/2012	RE Offense 5:Guilty verdict filed and recorded at 3:15 PM	105	
04/12/2012	RE Offense 6:Guilty verdict filed and recorded at 3:15 PM	106	
04/12/2012	Re Offense 003: Defendant sentenced to Ten (10) Years and not more than Twelve (12) Years committed to the Massachusetts Correctional Institution, Cedar Junction. Credit of 53 Days (Timothy Feeley, Justice)	107	
04/12/2012	Re Offense 004: Defendant sentenced to Ten (10) Years and not more than Twelve (12) Years committed to the Massachusetts Correctional Institution, Cedar Junction. Credit of 53 Days Sentence to be served concurrent with Offense 003 (Timothy Feeley, Justice)	108	
04/12/2012	Re Offense 006 Defendant sentenced to Two (2) Years and not more than Three (3) Years committed to the Massachusetts Correctional Institution, Cedar Junction. Credit of 53 Days Sentence to be served from and after sentence on Offense 003. (Timothy Feeley, Justice)	109	
04/12/2012	Re Offenses 001 & 005: Defendant sentenced to Five (5) Years Probation to be served from and after Offense 003. (Timothy Feeley, Justice)		
04/12/2012	Defendant is subject to the following special conditions 1) register as sex offender, 2) DNA Sample, 3) 3) No Contact with Victims, 4) No unsupervised conduct with children under 16 during period of probation, 5) Sex Offender treatment as determined by probation, 6) G.P.S. Bracelet (Timothy Feeley, Justice)		
04/12/2012	Probation supervision fee assessed \$65 00 monthly. Fee Waived until probation. (Timothy Feeley, Justice)		
04/12/2012	Victim-witness fee assessed. \$90 00. Fee Waived until probation (Timothy Feeley, Justice)	110	
04/12/2012	Assessment of \$178 50 re Monthly G.P.S. Fee. Fee Waived until probation. (Timothy Feeley, Justice)		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/12/2012	Motion for Stay Of Execution Pending Appeal filed 4/11/2012 and Denied 4/12/2012. (Feeley, J)	111	
04/12/2012	Motion To Set Aside Verdict filed 4/11/2012 and Denied 4/12/2012 (Feeley, J)	112	
04/12/2012	NOTICE of APPEAL FILED by Richard Jones copy to M.D. & E.G., D.A.'s Office	113	
04/12/2012	Legal counsel fee paid as assessed in the amount of \$150.00 *****NOTE \$150.00 of the Bail money was used to pay Legal Counsel Fee.	115	
04/17/2012	Court Reporter Nottingham, Patricia (per diem) is hereby notified to prepare one copy of the transcript of the evidence of 07/18/2011		
04/17/2012	Court Reporter McDonald, Maryann is hereby notified to prepare one copy of the transcript of the evidence of 07/19/-20/2011		
04/17/2012	Court Reporter Pietrella, Paula is hereby notified to prepare one copy of the transcript of the evidence of 07/21/2011		
04/17/2012	Court Reporter Canty, Kathleen is hereby notified to prepare one copy of the transcript of the evidence of 04/02 - 12/2012		
04/19/2012	Notice of appeal from sentence to Cedar Junction MCI (Walpole) filed by Richard Jones	116	
04/19/2012	Letter transmitted to the Appellate Division All parties notified 4/25/2012.	117	
07/16/2012	Appearance of Deft's Atty Peter M Onek, C.P.C.S	118	
08/27/2012	Transcript of testimony received 1 volume on cd from Transcript of proceedings from Court Reporter Pietrella Paula		
01/23/2013	Transcript of testimony received 4 volumes on cd from Transcript of proceedings from Court Reporter Canty, Kathleen		
01/25/2013	Transcript of testimony received 4 volumes on cd from Transcript of proceedings from Court Reporter Canty, Kathleen		
05/28/2013	Transcript of testimony received 2 volumes on cd from Transcript of proceedings from Court Reporter McDonald, Maryann		
07/05/2013	Dated 05/20/2013 - Order from Appellate Division of the Superior Court Department for the Review of Sentence it is ORDERED that Judgement imposing said sentence stand and that said appeal be and is hereby dismissed By the Appellate Division Sitting at Suffolk Superior Court at Boston.	119	
07/29/2013	Court Reporter McDonald, Maryann is hereby notified to prepare one copy of the transcript of the evidence of 06/09/2011		
10/04/2013	Appearance of Deft's Atty: Patrick Levin, CPCS	120	
10/23/2013	Transcript of testimony received 1 volumes from Transcript of proceedings from Court Reporter Nottingham, Patricia (per diem)		
05/02/2014	Transcript of testimony received 1 volume on cd from Transcript of proceedings from Court Reporter McDonald, Maryann		
07/22/2014	Transcripts sent to all parties		
11/18/2014	Appearance of Deft's Atty: Nancy A Dolberg, CPCS	121	
07/24/2015	Court Reporter Kathy Canty is hereby notified to prepare one copy of the transcript of the evidence of 05/17/2010 08:00 AM Hearing on Dwyer Motion, 08/31/2010 08:00 AM Hearing on Dwyer Motion, 11/15/2010 08:00 AM Hearing on Dwyer Motion 03/28/2011 08:00 AM Trial Assignment Conference, 05/02/2011 08:00 AM Hearing on Compliance, 09/15/2011 08:00 AM Status Review, 09/21/2011 08:00 AM Pre-Trial Conference, 09/29/2011 08:00 AM Status Review	122	
07/24/2015		123	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Court Reporter Patricia Nottingham is hereby notified to prepare one copy of the transcript of the evidence of 04/05/2010 08:00 AM Hearing on Dwyer Motion, 08/02/2010 08:00 AM Hearing on Dwyer Motion.		
11/10/2015	Appeal Transcript received from Kathy Canty, Court Reporter (7 volumes) in Digital Format		
09/21/2016	Appeal notice of assembly of record sent to all parties		
09/21/2016	Appeal Statement of the Case on Appeal (Cover Sheet).	124	
09/26/2016	Notice of Entry of appeal received from the Appeals Court Entered September 23, 2016.	125	
	Applies To: Jones, Richard D (Defendant)		

Case Disposition

Disposition	Date	Case Judge
Disposed	07/29/2013	

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

**SUPERIOR COURT
CRIMINAL
NO. 2009-00406**

COMMONWEALTH

vs.

RICHARD JONES

MEMORANDUM AND ORDER

Currently before the court are defendant Richard Jones' ("Jones") two motions for Rule 17 subpoenas. [D. 19, 20]. Jones is charged with rape and indecent assault and battery charges. The two alleged victims are his biological daughters. The motions are directed to records of a psychiatrist and counseling center pertaining to the younger of the two daughters. She was about eleven at the time of the alleged offenses. She was referred to a psychiatrist and then a counseling center by her school when she was fourteen, in the fall of 2008. The referral related to her behavior at school. She thereafter first disclosed the alleged conduct to a friend in December 2008, but denied it to a guidance counselor and her own mother at that time. She later disclosed the alleged conduct to the police in February 2009.

The motions are governed by Mass. R. Civ. P. 17(a)(2), as construed by the

Supreme Judicial Court's decision in *Commonwealth v. Lampron*, 441 Mass. 265 (2004). Therein, the Court stated:

[T]he party moving to subpoena documents to be produced before trial must establish good cause, satisfied by a showing "(1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general 'fishing expedition.'"

Lampron, 441 Mass. at 269, quoting *United States v. Nixon*, 418 U.S. 683, 699-700 (1974).

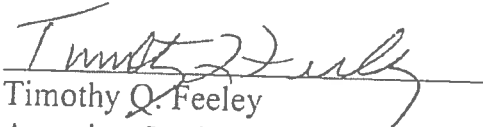
Jones argues the relevancy of the requested records alternatively. First, he argues that the services provided post-dated the alleged abuse and could contain statements of the daughter about the abuse. As the alleged abuse was undisclosed at the time, the court concludes that the requested records do not contain such statements of abuse, as the mental health care providers would have been legally required to file reports of the disclosure of any such abuse (and they did not do so).

Alternatively, Jones argues that if no such statements are contained in the requested records, the absence of any such a report by the daughter is relevant evidence that the abuse did not happen. The court is not persuaded, and notes that it is Jones' burden to establish good cause. At the time of the referral to the psychiatrist

and counseling center, the daughter had confided to no one about the alleged abuse. Her behavior at school may well have been influenced by the alleged abuse, but the evidentiary significance of her lack of disclosure in the context of mental health referrals of a girl her age for school behavior issues is too speculative for this court to find such a lack of disclosure to be evidentiary and relevant. Without such a finding by this court, the requested subpoenas amount to nothing more than a prohibited fishing expedition.

ORDER

Defendant's motions for Rule 17 subpoenas [D. 19, 20] are **DENIED**.


Timothy Q. Feeley
Associate Justice of the Superior Court

April 6, 2010

#32

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CRIMINAL
NO. 2009-00406

COMMONWEALTH

vs.

RICHARD JONES

By: J. T. CPS
H. A. 5 T. CPS
12/16/10

MEMORANDUM AND SECOND ORDER

Currently before the court is defendant Richard Jones' ("Jones") motion for a Rule 17 subpoena. [D. 25]. Also before the court are two earlier motions for Rule 17 subpoenas which the court denied on April 6, 2010 [D. 19, 20], but which Jones asks this court to reconsider in light of a subsequently filed affidavit. Other earlier motions for Rule 17 subpoenas were allowed with the agreement of the Commonwealth. [D. 18, 24].

Jones is charged with rape and indecent assault and battery charges. The two alleged victims are his biological daughters. The new motion is directed to records of Marblehead Veterans Middle School, one of the alleged victims (the younger of the two daughters) interacted with a guidance counselor before she disclosed the alleged abuse. The only known interaction represented to the court involves a letter

of recommendation written in support of the student's application to a vocational high school. The two earlier subpoena requests are directed to records of a psychiatrist and counseling center pertaining to the same daughter. She was about eleven at the time of the alleged offenses. She was referred to a psychiatrist and then a counseling center by her school when she was fourteen, in the fall of 2008. The referral related to her behavior at school. She thereafter first disclosed the alleged conduct to a friend in December 2008, but denied it to a guidance counselor and her own mother at that time. She later disclosed the alleged conduct to the police in February 2009.

All three motions are governed by Mass. R. Civ. P. 17(a)(2), as construed by the Supreme Judicial Court's decision in *Commonwealth v. Lampron*, 441 Mass. 265 (2004). Therein, the Court stated:

[T]he party moving to subpoena documents to be produced before trial must establish good cause, satisfied by a showing "(1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general 'fishing expedition.'"

Lampron, 441 Mass. at 269, quoting *United States v. Nixon*, 418 U.S. 683, 699-700 (1974).

In his earlier motions, Jones argued the relevancy of the requested records

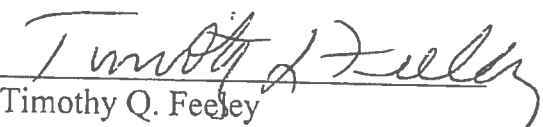
alternatively. First, he argued that the services provided post-dated the alleged abuse and could contain statements of the daughter about the abuse. As the alleged abuse was undisclosed at the time, the court concluded that the requested records did not contain such statements of abuse, as the mental health care providers would have been legally required to file reports of the disclosure of any such abuse (and they did not do so). Alternatively, Jones argued that if no such statements are contained in the requested records, the absence of any such a report by the daughter is relevant evidence that the abuse did not happen. The court was not persuaded, and noted in a written order [D. 21] that it was Jones' burden to establish good cause. At the time of the referral to the psychiatrist and counseling center, the daughter had confided to no one about the alleged abuse. Her behavior at school may well have been influenced by the alleged abuse, and there may be evidentiary significance in her lack of disclosure in the context of mental health referrals post-dating the alleged abuse. But, that does not make what she said to counselors, or records of her counseling, evidentiary and relevant. Without such a finding, the court concluded that the requested subpoenas amounted to nothing more than a prohibited fishing expedition.

In support of his current request for a subpoena to the Marblehead Veterans Middle School, and for reconsideration of the denial of the two earlier subpoena requests, Jones argues that discovery and documents received in this case suggests

that the victim's ultimate disclosure involved repressed memory triggered by a "flashback." That may be so, but the court is not persuaded that the *Lampron* standard for the issuance of Rule 17 subpoenas has been met. Documents sought in all three subpoena requests pre-date the victim's first disclosure of the alleged abuse. The victim's failure to disclose at an earlier date to friends, family, school officials, and counselors may well be relevant impeachment inquiry, but that does not make any communications with school officials or counselors, or records of such communications, evidentiary and relevant. This court is left with the same conviction it had in April when it denied the earlier Rule 17 requests: issuance of the requested subpoenas would constitute a prohibited fishing expedition.

ORDER

Defendant's motion for a Rule 17 subpoena [D.25] is **DENIED**. Upon reconsideration, defendant's motions for Rule 17 subpoenas [D. 19, 20] are **DENIED**.


Timothy Q. Feeley
Associate Justice of the Superior Court

November 16, 2010

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CRIMINAL
NO. 2009-00406

COMMONWEALTH

vs.

RICHARD JONES

MEMORANDUM AND THIRD ORDER

Currently before the court is defendant Richard Jones' ("Jones") renewed motion for a Rule 17 subpoena. [D. 72]. The motion seeks middle school counseling records pertaining to one of the two alleged victims. The same records were sought once before. [D. 25]. By written memorandum and order, with reasons stated therein, the court (Feeley, J.) denied the motion. [D. 32]. In his current motion, Jones adds nothing new in support of his request for the school counseling records. No new or additional affidavit has been filed.

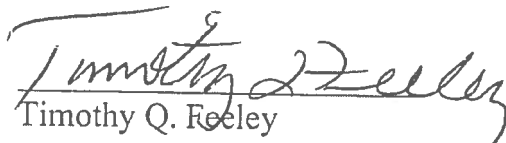
For the same reasons stated in the court's earlier memorandum and order, Jones' renewed motion will be denied. The court continues to find that Jones has not met the *Lampron* standard for issuance of a Rule 17 subpoena. Jones' motion is based on nothing more than speculation. He seeks records from before the first

disclosure of abuse by the alleged victim on the basis that the alleged victim **might** have disclosed the alleged abuse to school personnel, who **might** have failed to report it as required by law. A substantially greater showing is required before this court could find the requested records to be evidentiary and relevant. Jones' argument that the records might reveal that the alleged victim, despite opportunity to do so, did not disclose the alleged abuse to school personnel is equally unpersuasive to the court. The court assumes that is the case, and assumes that the Commonwealth's evidence will show the first disclosure of alleged abuse to post-date the alleged victim's school counseling session(s). Jones does not need records to show a non-disclosure that is undisputed. Jones will have ample opportunity and means, without the requested records, to show at trial that the alleged victim had ample opportunity to disclose the alleged abuse to school personnel (as well as others) before her first disclosure of the alleged abuse.

ORDER

Jones' renewed motion for a Rule 17 subpoena is **DENIED**.

September 22, 2011


Timothy Q. Feeley
Associate Justice of the Superior Court